

# THE MARTHA'S VINEYARD COMMISSION

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## *Martha's Vineyard Commission Minutes for the Special Meeting of January 31, 2002*

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, January 31, 2002, at 7:30 p.m. in the first floor conference room at the Commission Offices in the Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts. At 7:39 p.m., James R. Vercruysse – Commission Chairman and a member at large from Aquinnah – called the Regular Meeting to order.

*[Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; C.M. Oglesby; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Mr. Israel arrived at 7:58 p.m. All of these members remained for the entirety of the Special Meeting and the Special LUPC Session.]*

### **Special Land Use Planning Committee Session: Down Island Golf Club (DRI #543).**

Kenneth N. Rusczyk, the Oak Bluffs Selectmen's Appointee, made a **Motion To Suspend The Full Commission Meeting And To Go Into A Special Land Use Planning Committee Session**. Said Motion was duly seconded; it carried unanimously. Richard J. Toole – a Commission member at large from Oak Bluffs and Chairman of the LUPC – took the gavel.

Marcia Mulford Cini, a Commission member at large from Tisbury, provided a report on a meeting of three Commissioners earlier that evening regarding mechanisms that were available to ensure that any conditions attached to the Decision would be carried out. Those mechanisms were: 1) payment of a performance bond; 2) an environmental impairment insurance policy; and 3) the statutory enforcement powers of various authorities, particularly the Board of Health under Chapter 111.

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Ms. Cini related that she had gone through the conditions drawn up by Staff and had assigned the appropriate mechanism to each. Staff would be doing further investigation based on the discussion they had had, she said.

Kate Warner, the West Tisbury Selectmen's Appointee, remarked, "The thing that struck me in the last few days is Bill [Wilcox]'s comment on October 18 where it says, 'A huge environmental insurance policy would be of little help if litigation is necessary to access the resources promised.' That's a nightmare." Ms. Cini agreed that such a policy was not going to be as much help as it might at first appear.

Ms. Warner also pointed to the costs to the Town from litigation. Ms. Cini responded that they were looking at the other two options, particularly the statutory enforcement powers that the Town might have in the Water District. In addition, Staff was going to work on coming up with a performance bond structure, she noted.

Megan Ottens-Sargent, the Selectmen's Appointee from Aquinnah, observed that the presumption that they were operating under was that the water table monitoring and the lysimeters would catch any deficiencies or accidents long before conditions became catastrophic. Were a catastrophe to occur, she pointed out, the onus would be on the plaintiff to prove that the adverse conditions had been caused solely by the golf course. On the other hand, she said, one thing they were sure they wanted insurance for was incidents like spills.

Mr. Toole reported that DRI Coordinator Jennifer Rand had put together a bibliography of related materials on habitat as well as correspondence and that Water Resources Planner William M. Wilcox had produced another draft of possible conditions related to water quality.

Mr. Wilcox referred the members to his Staff Notes entitled *Redraft No. 4 of Possible Conditions for Discussion: W. Wilcox - 31 January 2002*, referred to hereinafter as the *January 31 Staff Notes*. [See the Full Commission Meeting File of January 31, 2002 (the meeting file) for a copy of this document.] The revisions made since the previous draft were in italics, he said, and that was what he would be going over that evening.

Mr. Wilcox pointed to the italicized passages on page 1 of the *January 31 Staff Notes*, which he characterized as self-explanatory. Ms. Warner wanted to know where Mr. Wilcox was going to put the condition related to the setting-up of observation wells to the east. Item 6 under Condition 1 on page 1, she said, referred only to their existence and not to their siting. Mr. Wilcox answered that, ideally, the locations of all three observation wells would be spelled out in the Quality Assurance Plan. He referred her to Item 10 under Condition 2 on page 3. "They really do need a third well somewhere in the eastern half of the property," he remarked, "because right now there's none over there."

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Mr. Wilcox proceeded to the top half of page 2 and noted the inclusion of a condition about fuel storage (Item 15 under Condition 1). "That is a double-walled tank with interstitial monitoring with a re-enforced concrete cover on an impermeable surface," he explained, adding, "The fuel storage, I think, was covered pretty well in their initial submission." *[Mr. Wilcox was referring to the first Down Island Golf Club Application, DRI #515.]*

Turning to Item 2 under Condition 2 on page 2, Mr. Wilcox related in that looking over what the Applicant had offered, he had found the figure of \$75,000 annually over three years. So he had inserted that figure in the sentence about the funding for the Watershed Protection Committee, noting that this would cover the cost of sampling, laboratory analyses and interpretation of the results. "My thought is that ought to be enough to get us through the first three years," he said, "and those are going to be the expensive years, I think, getting a thing like this off the ground."

At the end of the paragraph containing the aforementioned Item 2, Mr. Wilcox pointed out that he had added two sentences: "At the end of the three-year period, the annual funding may be reduced to the actual cost of carrying out, overseeing and interpreting the monitoring programs. At the end of the seven-year period, the frequency and number of sampling sites may be reduced to 18 lysimeters, the groundwater table observation wells, the sampling of the four groundwater sampling sites sampled quarterly and the in-pond sampling sites sampled twice annually in August."

Mr. Wilcox then referred to the note that immediately followed, explaining that later on in the document they would be getting to conditions for suggested items like an annual organic growing certification as well as wetland and moth monitoring. "If those items are added in here," he said, "I'm not sure they'll be covered by that figure, even though I still have it listed at seventy-five thousand. I don't know what those kinds of items might cost."

One of the things that he had found out, Mr. Wilcox continued, was that the Northeast Organic Farmers Association did have a certification program for landscape management that they were getting off the ground. "So it may be applicable to the golf course," he said, adding, "I've ordered their materials, and they haven't come in yet."

Chilmark Selectmen's Appointee Jane A. Greene asked, "You're saying that you don't know how much to put in so that you're not actually listing the amount of money, as you indicate in the note?" "Yeah, I don't know what it should increase by to cover those three items," replied Mr. Wilcox. "I would think organic certification would be pretty inexpensive. I'd be surprised if it's more than a thousand. Wetland monitoring, it depends on how intensive it is, and it's in one of the suggested additions to the conditions that we'll discuss in a minute."

Mr. Wilcox went on, "And the moth monitoring, quite honestly, is just beyond me. I mean, you know they use light traps, they use pheromone traps to trap them, and they

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take them out and count how many adults they've caught. It seems to me that wouldn't be too expensive, but depending on how many visits they have to make to the Island to how many sites, you know. So there's a lot of unknowns."

Robert Zeltzer, a member at large from Chilmark, confirmed that \$75,000 was currently the figure being offered by the Applicant. Michael Donaroma, the Edgartown Selectmen's Appointee, wondered if the Applicant would be putting the money in escrow somewhere. "What I'm getting at," he said, "is rather than us trying to estimate what this might cost, that's not really our concern. Our concerns is that things get monitored correctly, right?" "Yes," responded Mr. Wilcox.

"My concern that is things get checked, things get monitored, the checks and balances are in balance," continued Mr. Donaroma, "and it's the Applicant's responsibility to do it." "Yeah, I agree with you 100 percent," said Mr. Wilcox.

The Water Resources Planner added, "The only reason I tried to put a dollar figure on it was I had seen all this monitoring working under the auspices of the Watershed Protection Committee. They would hire a consultant to do the monitoring and send it to the lab, et cetera. And so I was thinking, rather than have ... the hiring be done by the golf course, it should be done by the committee, and to do that, I think we need to get a sum of money in there."

Ms. Greene suggested that the committee could bill the Applicant. "That would be a good way to do that," agreed Mr. Wilcox.

Ms. Ottens-Sargent pointed out that monitoring wildlife was different from monitoring water quality, and she wondered if the Watershed Protection Committee would hire a separate consultant to do that. "Should there be some language to ensure that appropriate, extensive monitoring [occurred]?" she inquired. Ms. Rand explained that when the MEPA went through the Environmental Impact Report (EIR) process, it applied rules and regulations related to the adequacy of monitoring plans that they might farm to the Natural Heritage and Endangered Species Program.

Ms. Rand continued, "If MEPA's plan is satisfactory, that's fine. We can further condition that the monitoring plan submitted to MEPA be deemed satisfactory by a conservation ecologist [who is] separate. That is what I suggested."

Mr. Wilcox turned to Item 7 under Condition 2 on page 3, where with regard to the nitrogen offsets he had added that the Applicant submit a schedule and a map to the Watershed Protection Committee showing the proposed denitrification upgrade locations, with an emphasis on upgrading systems that were near the golf course. "That's to get at moving nitrogen at the head of the pond," he explained. In addition, the Applicant was to prioritize assisting those who could not finance the cost of an upgrade, he said, adding, "I don't know how you judge whether they can afford it or not."

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Mr. Donaroma remarked that he thought the Applicant's offer of septic upgrades was for anyone who wanted it. "I assume they'd have to get in line, and there's somebody who's going to pick who gets it," he said. "I think it makes more sense to us if the one that's in the worst condition or in the worst location be somewhat the criteria." "I would agree," said Mr. Wilcox, who elaborated, "You know, you could prioritize them to systems that were having problems, maybe systems that were right on the shore, large systems, and people that can't afford it. I mean, you can have a whole scheme of prioritizing."

Ms. Ottens-Sargent wanted to know if Mr. Wilcox had taken the dollar figure out of this condition based on the realization that the cost of meeting the nitrogen budget would be considerably more than the amount originally offered. "Yeah, I think they offered fifty thousand a year for upgrading for either three or five years," noted Mr. Wilcox, "and I'm not sure that would do enough systems to get to the nitrogen load reduction that they have offered. So I've left that dollar figure out completely for that reason." *[Mr. Israel arrived at this point, 7:58 p.m.]*

Ms. Warner asked, "So the way they will know that they have reached their targets is that they will have to test before and after? Is that correct?" Mr. Wilcox replied that he had not intended to suggest that the Applicant test the effluent beforehand. "My suggestion would be that they would use the average nitrogen loading that's the acceptable figure, 35 parts per million," he explained. "Then after the system is upgraded, they would monitor the flow and the nitrogen in the effluent, and that would then give them the flow to use to apply to the before-and-after picture, to calculate what the actual nitrogen reduction is."

So did the figure of 35 parts per million appear anywhere in his conditions? wondered Ms. Warner. "Yeah, good question. No, I don't think it does," answered Mr. Wilcox. "I know that there's a mention in here that they will have to install flow-measuring devices at the upgrades..." That's Item 4? inquired Ms. Warner. Yes, said Mr. Wilcox. Ms. Warner suggested that the wording needed to be tightened up a little.

Ms. Warner also wanted to know how the owners of the upgraded systems were going to pay for their maintenance in perpetuity and whether the Commission would ask for a fund for that. Mr. Rusczyk said he thought that would be up to the homeowner. Ms. Warner then emphasized that the upkeep of these systems were very expensive and would constitute quite a financial burden for some owners.

Ms. Greene recommended that the Applicant have a scholarship program for those who could not afford the upkeep. Mr. Donaroma suggested that the cost estimate for each of the upgrades include the cost of maintenance.

Mr. Rusczyk pointed out that one of the ways to identify which systems should be worked on would be according to the age of the unit. Mr. Donaroma noted that the Engineer's Report to the Board of Health would contain such information.

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Chairman Vercruysse recalled that the Commission had been given a series of signed agreements for upgrades, including ones for Island Elderly Housing, the Tisbury Marketplace and six or seven private residences. It seemed to him, he said, the recipients of the upgrades had already been chosen.

"I think that gets to the crux of the problem," remarked Ms. Warner. "I think the key is that we are asking, we are putting a lot of our marbles in this section of this. We are counting on their running a successful mitigation program. This program, to be successful, they've got to mitigate in the area that they are contributing to. We've heard documentation from Staff and some other people that the head of the Lagoon does not flush well and that's one of the reasons for its demise."

Ms. Warner went on that in her discussions with Mr. Wilcox, she had come to understand that one could not precisely determine what the upgrades at places like the Martha's Vineyard Arena were going to mitigate. "They might help a little bit with Sengekontacket, they might help a little bit with the Lagoon, and they might help with the harbor," she said. "So the whole point of this is, if this is going to be successful – and I have real doubts as to whether it is going to be successful – but if it's going to be, it's got to be targeted to the locations that will actually have an effect."

Ms. Warner added that in looking over the leases, she had recognized at least one party who could certainly afford to pay for an upgrade himself. She repeated that she wanted the main priority to be location, and after that, if they were choosing among 15 possible candidates, then those that could afford the upgrade should have a slightly lower chance than those whose systems were failing or who really needed the help.

Ms. Warner then related the case of a Ms. Rheault who had spent almost \$25,000 just to get her system up and going. Mr. Wilcox mentioned that Ms. Rheault's system had had to be hand-dug because of the location.

John Best, a Commission member at large from Tisbury, spoke about a joint meeting the week before with the Cape and Islands Commissions, where Cape Cod Commission Executive Director Margo Fenn had reported on recent results with enhanced septic systems. "She seemed to be implying that the results had been less than satisfactory," he said, "and that their performance on the seasonal basis wasn't good at all." He requested that Mr. Wilcox look into that.

In addition, continued Mr. Best, Doug Cooper had told him that testing of such systems was currently required once a month for six months and then quarterly or semi-annually after that. Mr. Cooper had also related that the testing, much of which was for volatile organic compounds, was not really appropriate for residential systems in this area and would probably not be required by the State in the future.

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Ms. Greene said that she, too, had heard that the State would be backing off on the VOC testing, and Mr. Wilcox pointed out that in any event such testing was not useful for nitrogen loading calculations.

Ms. Ottens-Sargent suggested prioritizing the systems to be upgraded not only by location but also by whether or not they were year-round systems. With \$50,000 a year covering three or four upgrades each year, how much nitrogen would be removed over a five-year period? she inquired. Mr. Wilcox replied that the nitrogen loading offsets would not be as much as the Applicant can claimed. "I don't think it'll come close," he remarked, adding, "They were assuming that with 25 pounds per dwelling, that's a real high [offset] number. That's why I wanted a dollar figure to be taken out of the offset program..."

How many system upgrades would be needed to meet the Applicant's numbers? asked Ms. Ottens-Sargent. Mr. Wilcox answered that this depended on the flow. He pointed to the high school system, which handled 10,000 gallons a day and which could be upgraded, thereby removing a sizable chunk of the nitrogen. On the other hand, he said, in the case of a small seasonable house, the Applicant would not be getting "much bang for the buck for the upgrade." Mr. Wilcox added, "I would assume they'd go after year-round systems because they'll get more nitrogen out that way, and they'll go after bigger sources because they'll get more from a single upgrade."

Mr. Zeltzer observed that there were areas, particularly around the Lagoon, where because of previous years' testing and physical observations along the shoreline, one could get a "pretty good idea of where you're getting a lot of the nitrogen feed into the Lagoon." Although it would make sense to focus on certain systems, he went on, one could not force owners to do the upgrades unless the system was so inadequate that the Board of Health could be involved.

Through his own observations paddling around the Lagoon, Mr. Zeltzer reiterated, there were some areas that very clearly were subject to huge nitrogen feeds. "And it makes me think," he remarked, "that in some cases where we may have very old systems, very old septic systems or cesspools and the like, they may actually be taking more than when we expect when we take the average, which is the number you're using. And we might just want to give them the opportunity to measure beforehand, if they elect to."

Ms. Warner observed that if the Applicant spent all his money upgrading the high school system, it would have to be determined which watershed would benefit and to what degree. Mr. Toole said that he thought the State was going to require the high school to build some kind of treatment plant. So could the high school upgrade to a denitrification system? he wondered.

"That's a good question," responded Mr. Wilcox, "and I don't have the answer for you. I think they were bumping up against that 10,000-gallon-a-day figure and that's where the

State requires advanced treatment. So it could be prohibitively expensive. The high school may not be a reasonable option for the golf course."

County Commission representative Roger Wey said that he agreed with Ms. Warner that priority should be given to the head of the Lagoon because of the slow rate of flushing. Also, he added, there was where some of the deepest water in the Lagoon was and that was where the nitrates would accumulate.

West Tisbury member at large Linda Sibley agreed with this. Although for obvious reasons, public facilities might seem to be attractive places to put the Applicant's resources, she said, if that would not be the most effective mitigation, that should not be the priority.

"That's the point exactly," declared Mr. Donaroma. "They offered to mitigate X number of [pounds of] nitrogen. So I think the head of the Lagoon is number one and maybe Sengekontacket's number two. But it sounds like just a mathematical formula, and Bill [Wilcox], that's your department." He added that the Board of Health was the key, since their decisions were "based on science."

"I think we should just forget about the idea for the high school," said Ms. Greene. "The cost is at minimum a half a million dollars for installing the system, and to even dream the Applicant's going to come up with that money when you're only talking two hundred thousand – it's ridiculous."

Mr. Wilcox moved on to Item 14 under Condition 2 on page 4, which required that as new pesticide and fertilizer products became available, the Applicant would provide the Watershed Protection Committee with enough information to evaluate and determine the safety of the products. Furthermore, no new products could be used without the authorization of the WPC, and the Applicant would notify the committee as approved products were removed from use.

Mr. Donaroma agreed with the reasoning behind this condition. Andrew Woodruff, a Commission member at large from West Tisbury, stated that he would like to see at the disposal of the committee the expert they would hire to evaluate the turf management plan. Mr. Wilcox agreed that one of the consultant's functions would be to look at new products.

Responding to a question from Ms. Warner, Mr. Wilcox referred the members to Item 28 under Condition 2 on page 6, which concerned an alternative form of turf management suggested by a Commissioner. In the last sentence of the first paragraph of said item was written: "This is meant to specifically exclude pest control products that are synthetically created to mimic naturally occurring products." "I personally don't have a problem with the use of those kinds of materials," he said, adding, "They don't really qualify in the more extreme definition of the term 'organic.'"



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"Are you thinking of gypsy moth bacteria or something?" inquired Ms. Greene. "The one I'm thinking of," replied Mr. Wilcox, "is a Heritage product which is a fungicide that's a laboratory-brewed mimic of a naturally occurring secretion from mushrooms.... An organic gardener would say that's not an organic product. But I think it functions like an organic pest-control product, and I think with limited use it's probably completely safe."

Tisbury Selectmen's Appointee Tristan Israel mentioned some sort of genetically engineered form of corn that had unexpectedly killed butterflies. "How do we control those kinds of things?" he wondered. Mr. Wilcox replied that they would rely on the Watershed Protection Committee to review any new products with their consultant. Messrs. Donaroma, Israel and Wilcox discussed the meaning of this condition, after which Mr. Wilcox suggested that perhaps the final sentence of the first paragraph was not necessary. Ms. Sibley noted that what Mr. Israel was trying to say was that genetically engineered products by their nature were riskier since any negative effects were harder to manage.

"I respectfully disagree with Bill [Wilcox]," commented Mr. Woodruff. Although some of the products referred to might be "on the edge" between organic and inorganic, he said, "I think you're walking a slippery slope, particularly in terms of should a[n] organic certification program come along in the future. Because I know that they would not accept that. And I think you have to make a choice there. I think you're opening up a can of worms, allowing that to slide through. That's my personal opinion." "That's your choice," emphasized Mr. Wilcox. "I think it's your choice how organic the course is going to be."

James Athearn, a Commission member at large from Edgartown, pointed out that "organic" meant "absolutely strict, by the book, no fooling around." Mr. Donaroma cautioned that turf products changed from day to day. "To state something has to be 'strictly organic' when we don't even know what 'strictly organic' is is a stretch," he stressed. He urged the Commission to have common sense and to be logical, to do the best they could and to make the best decisions they could. "I like the 'no 'cides,' I like the direction that we're going, but we might do something when we don't know what we're talking about," Mr. Donaroma concluded.

"This is almost an impossible thing to put together," remarked Mr. Israel. Mr. Woodruff noted that the U.S.D.A. had been working with organic farmers for 12 years and that standards had in fact been developed. The definition of "organic," he said, would only get more defined and not less defined. "So what is your position?" inquired Mr. Toole. "I'd say strictly organic," replied Mr. Woodruff.

Mr. Zeltzer commented that he agreed with Mr. Donaroma. For one thing, he said, certain organic programs were simply marketing ploys designed to bring in a higher price. He continued, "I think that the WPC that has been created, giving them the ability, as Michael [Donaroma] has suggested, to look at these things, I mean, if somebody could

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really tell me that there was an effective organic program in place that'd been tested and people really knew about and had a long track record and hasn't been questioned by other experts in some other area or in the same area, I'd feel better about it."

Mr. Zeltzer concluded, "This is a constantly evolving area, and I think they should work towards organic. I think we should be very strong in saying they should work towards organic."

Ms. Greene remarked, "I think we also need to face the fact Bill [Wilcox] has ordered a kit to find out what this certification process is, and until we see it, we don't know what we're talking about."

Ms. Warner pointed out that the concept of being a strictly organic golf course had been a selling point by the Applicant. "So why on earth would we lessen the requirement? I can't imagine," she said. Furthermore, Ms. Warner expressed concern about the amount of responsibility being laid upon the shoulders of the WPC. "This is like asking these people to be just right next to God in terms of their ability to keep this program working well," she observed, adding, "People are relying too much on it."

Mr. Rusczyk stated that he liked the idea of working towards organic. Moreover, the WPC would in fact have an expert that they could rely on working with them and for them. "So that person will be the person who's going to be the person who will talk to God," he said. He pointed to the example of thalidomide, a wonder drug that had once been considered safe and had turned out to be harmful, and he stressed that the expert hired by the WPC would be their guide.

Mr. Toole referred to page 5 of the Martha's Vineyard Golf Partners Written Decision (DRI #484), where conditions stated that the golf course would be strictly organic as defined in the Decision and that the Applicant had to submit to the Commission for its approval an organic turf management plan. Had that Applicant submitted such plan? he asked. "The pesticide list? No," replied Mr. Wilcox. "The management plan they did submit, but they withdrew the pesticide list at the last minute before it was approved."

Returning to the *January 31 Staff Notes*, Mr. Wilcox noted, "To their credit, the Down Island Golf pesticide program is really pretty much organic. I think that virtually all of the ones that are on there meet the 'strictly organic' definition. It's the fertilization program that has all the inorganic materials that makes it not quite organic."

Ms. Sibley echoed Ms. Warner's remarks about the Applicant's having used the organic approach as a selling point. "And I don't think that we should empower the WPC so greatly that they could relax the standards," she said. "I mean, we have to set at least a minimum standard which the WPC would then enforce. And I'm comfortable with the 'strictly organic.'"

Ms. Sibley acknowledged Mr. Zeltzer's point about producers using the term "organic" as a marketing tool. "I don't always buy organic food," she said. "When I do buy it, I think not so much, frankly, of my own health as I do of the health of the planet. Because I think that's why you encourage people who are organic farmers, because they're being kinder to the Earth. And I think it's reasonable for us to require this golf course to be as kind to the Earth as a golf course can possibly be."

"As I said concerning the idea of organic," remarked Mr. Athearn, "it's not so much what's currently in fashion or how the [inaudible] of chemicals work or even what common sense dictates. It's more that the entity undertaking the organic program had made a, has adopted a mindset of total commitment that a simpler solution will always be used. That's absolute, [even] if he loses the crop... There's a very big difference between 'total' and 'most of the time.'"

Mr. Israel expressed concern about the use of substances like milky spores that might spread into areas where they could cause harm. Mr. Wilcox responded that it was really hard for milky spore to get established in the soil and that if it is not applied in August in the heat of the summer, you would have trouble getting it going. "So I would assume that it wouldn't go too far beyond where you ..." Mr. Israel interrupted and said that his understanding was that a large quantity of the material would be applied over a number of years.

"I don't want to come back on the organic offer either," said Mr. Donaroma. "I really don't think anybody does." He liked for the most part, he continued, the wording from the Vineyard Golf Partners Decision that Mr. Toole had alluded to. "I guess my only fear, he remarked, "is that you just get fanatical to the point where you don't use something that's better because of ... the way we've written something."

Mr. Donaroma also suggested that perhaps the Applicant should not be allowed to begin construction until he had submitted a complete turf management plan, along with a list of products that would be used.

Mr. Woodruff commented that just because a product was organic did not mean that it could not be reviewed by the Watershed Protection Committee, referring to Item 15 under Condition 2 on page 4. He also agreed with Mr. Donaroma that the Applicant should not be allowed to begin construction until the organic turf management plan had been reviewed and approved.

Ms. Greene made a recommendation: "I'd like to suggest that the consultant should have the right to go to the WPC and say that they should consider a waiver to use a product that is not strictly organic, such as Michael [Donaroma] was describing, where if a product would be more harmful, then at the recommendation of the consultant to the WPC, a waiver could be given for a product that would be less dangerous. Then it would be up to the WPC to make the decision."

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Chairman Vercruysse observed that when Mr. Donaroma said a non-organic product might be better, it was important to know for whom it was better. "Better for the environment," said Mr. Donaroma. The Chairman then stated, "I think we have to be absolute and clear on the organic definition and not waiver at all."

Mr. Woodruff referred the members to a definition of "organic" found in Item 28 under Condition 2 on page 6. He commented that he liked Mr. Wilcox's definition, and he recommended that the committee adopt the wording of that item. After more discussion, the LUPC members agreed that they would recommend a combination of the language of Item 28 and the language from the Martha's Vineyard Golf Partners Decision.

Mr. Zeltzer referred to the fourth paragraph of Item 28, which described how the organic turf management plan was to be brought back to the Commission for final approval 45 days prior to final grading. "I think there was a general feeling that it should be even before that," he said. He asked Mr. Wilcox if he had an opinion on this. Mr. Wilcox replied that the phrase "prior to the start of construction" seemed to be what the members were favoring.

Ms. Greene said, "I have one concern that if it's before he starts construction, that means before he cuts down trees and that the actual makeup of the soil that's going to be on the course will not be finalized at that time. And so if he has to give you a plan that's going to go through a great deal of review, it ought to be working with the soils that he's actually going to be actually finalizing with."

Mr. Woodruff made a Motion that the LUPC accept the first bullet under Item 28 and let Mr. Wilcox work on the second section a little more. There was no second. Mr. Toole stated that he wanted to bring this discussion to a conclusion that evening. He asked everyone if they could agree that the golf course was to be strictly organic. All but three of the members nodded or murmured agreement. Mr. Donaroma pointed out that they almost had total agreement on Item 28.

Mr. Wilcox returned to the *January 31 Staff Notes*, reading aloud Item 16 under Condition 2 on page 4. He explained that this limited the application of pesticide to managed turf areas. "The secondary rough would be maintained without the use of pesticides," he said.

Items 17 and 18, Mr. Wilcox continued, were "an either-or," with both of them dealing with actions to be initiated in the case of a drought. Regarding the latter, Mr. Best confirmed with Mr. Wilcox that the water table elevation would be going down. "In other words, it's not as low as 12 feet," Mr. Best said. "Yes," answered Mr. Wilcox, "it's only hit 12 feet once in 22 years, and it's bounced off, like, 12.2 feet repeatedly." He distributed to the members a table of the water table elevations over the years for the State Forest well. *[See the meeting file for a copy.]*

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"So the thought is," Mr. Wilcox went on, "that if it gets below 12 feet, then we're in a serious drought condition and that something ought to be done. And so the way I've worded it is that if it drops to 'an elevation of less than 12 and the Oak Bluffs Water District or the Board of Health declare an emergency condition exists, the golf course shall reduce the area of irrigated turf to tees and greens only until such time as the emergency no longer exists.'"

"I think it's highly unlikely that this is going to happen," remarked Mr. Wilcox, "but it would cover some kind of extreme weather conditions that persisted a fairly long time."

Ms. Greene requested that Mr. Wilcox go back to Item 16. "I wonder if we should include the State in this, Bill, because they do occasionally declare drought condition levels," she said. Mr. Wilcox replied that he had spoken to someone in the DEP Southeast office and had learned that they did not generally tell golf courses to cease watering because of a water problem.

Ms. Greene explained that the State had different levels and that the Island area had been declared a Level 2 rating recently. Mr. Wilcox answered that he did not know the details of that system, but that "I would say that I think this 12-foot elevation in the State Forest would cover us under those kinds of conditions."

"So this would have never come into effect in the last 23 years?" inquired Mr. Best. "Right," answered Mr. Wilcox, "because when it did that 12-foot [level] in 1981 or [198]2, it bounced right off the next month. It was up in February."

Mr. Wilcox noted that Water Superintendent Deacon Perotta had pointed out to him that the water table in the State Forest seemed to hit its highest levels in June, July and August, which was the period when the golf course would be pulling water out of the ground. "And I think that's true in the part of the aquifer where the water table is deeper, where the highest water table levels are in the early summer, which is a good thing," he said. A discussion of this issue ensued.

Mr. Warner asked Mr. Wilcox if he knew what the level was currently. "It's 12.3," responded Mr. Wilcox, adding, "I think I did it just last week." Ms. Warner wondered if the threshold should be a little bit higher. She offered her reasons for thinking that the 12-foot level was too low. Mr. Toole noted that the summer before, the Town of Oak Bluffs had instituted a voluntary ban on watering lawns. "They did the year before, too," he said. "Yeah, I think that's a common thing," said Mr. Wilcox. Answering a question from Mr. Donaroma, Mr. Wilcox clarified that those bans were not due to the availability of water but to problems in the delivery system.

The discussion of the water elevation threshold continued for some minutes. Ms. Greene suggested that perhaps they should raise the threshold by a tenth of a foot.

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Mr. Athearn observed, "Bill Wilcox knows the aquifer of Martha's Vineyard better than anyone in the world, and if he says 12's a good number, that's the best information I can get. Furthermore, I'd point out that it's usually reached, when it approaches 12, it's in January or December, and so for it to be down at 12 in June would be an extremely drastic situation."

Ms. Sibley remarked that she agreed with what Mr. Athearn had just said, except that in an extremely drastic situation of a 12-foot level in June or July, would the Commission want to wait for such a situation before taking action or would they want to set a slightly higher standard? "This is a recreational facility," she said. "This is not even potable water."

"You could go to twelve and a half feet or even twelve and three-quarters feet," said Mr. Wilcox, "but it's unlikely to develop in that time." "Let's just put in twelve and a half," recommended Ms. Greene. Mr. Israel made a **Motion That The Water Elevation Threshold Be Set At Thirteen**. Mr. Donaroma argued that the Board of Health had to ability to shut down the course. "I don't have a problem with 13 feet. I'll second his [Motion]," he then said.

Ms. Warner emphasized that in her conversations with Mr. Wilcox, he had said that the wells around the golf course could impact as far as the Greenlands District. In addition, she noted, the Town of Oak Bluffs had a well right near the Greenlands one. "So when you think about this issue," Mr. Warner declared, "it isn't just whether the Oak Bluffs Water Department has enough water. This is one of the more regional issues of this DRI, is this water situation."

Mr. Donaroma observed that he took Mr. Wilcox very seriously and that he had not heard any concern from him about the possibility of such a catastrophe. Mr. Wilcox explained that the aquifer in the area of West Tisbury accumulated a foot and a half of water recharge every year and that that foot and a half moved about 365 feet a year, accumulating another foot and a half during that time. "And it piles up up there so you have in storage in that area decades' worth of water," he said, "so in a short-term drought the water table's going to drop. It might drop 5 feet, it might drop 7 feet. But it isn't going to vanish. It's not going to go away. There's a huge amount of water in the reservoir up there."

Mr. Wilcox concluded, "I don't think the contribution from the golf course is going to extend into West Tisbury to any extent that would cause the normal, you know, 7- or 8-foot drop to become something extraordinary." "That's all the more reason to raise the threshold," said Ms. Warner.

Mr. Toole conducted a voice vote on Mr. Israel's Motion, which carried unanimously.

Ms. Sibley stated for the record, "I object to using this amount of water for this kind of a purpose, and I understand, I believe what Bill says, that this Island has way more water

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than we need. And I think that if we have more water than we need, we might be thinking about the fact that 20, 30 years from now, we might need to pipe that water to Cape Cod." She pointed out that the Town of Provincetown was importing its water from Truro because of saltwater intrusion and that as the Cape's population grew, the need for potable water would increase drastically.

Mr. Toole confirmed with the committee members that they wanted to eliminate Item 17, since they had adopted Item 18. Mr. Israel stated that he wished to echo Ms. Sibley's thoughts, and he emphasized that as they were working on the individual parts, they had to look at planning the whole.

Returning to Item 16, Ms. Greene said that she thought they had agreed that if the Applicant had to, he would put something like the appropriate bacteria in the woodland areas in order to fight something like gypsy moths. "No, that wasn't my understanding," responded Mr. Wilcox, who pointed out that any pesticides for the gypsy moths might harm the imperial moths. "We weren't going to allow anything in there," he said.

Mr. Donaroma agreed with Mr. Wilcox's recall of that discussion. He then suggested that Item 16 use the term "organic pesticides" and that they should be limited to spot applications to the managed turf area only. Three or four other Commission members murmured in agreement. Mr. Israel pointed out that the Applicant always had the option of replacing pieces of the sod, "which is probably the most benign, organic thing they can do." "That's generally what they try to do," said Ms. Greene.

"Should this be tied to any sort of monitoring?" wondered Ms. Ottens-Sargent. Mr. Wilcox replied, "If we're talking about using 2-4D or Bicamba or one of the synthetic pesticides, I would say yeah, that's going to have some effect on the soil life and you might want to monitor and see what effect it had. If you're talking about organic pesticides, I don't know. I think they shouldn't have much impact on the soil biota."

Ms. Ottens-Sargent pressed Mr. Wilcox further about the need for a monitoring plan for the pesticides and whether some mention should be made of this in the conditions. "Conceivably," replied Mr. Wilcox, "I don't know quite how you condition it. I suppose if the wildlife monitoring showed declines of certain species that there should be an evaluation that indicates what the cause is. And I guess if the cause turns out to be pesticides, then there should be some investigation as to how that's causing the decline in the wildlife species." He added that proving that sort of thing was almost impossible.

Ms. Ottens-Sargent suggested some sort of institute separate from the Watershed Protection Committee whose purpose would be to oversee wildlife monitoring. Mr. Woodruff expressed the opinion that the pesticide applications should be recorded and that the WPC members could have access to those records. "Yes," said Mr. Wilcox, "I think I had a condition in here somewhere that the golf course would provide the Watershed Protection Committee with the annual pesticide application report that goes

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into the Department of Agriculture." He referred Mr. Woodruff to Item 22 under Condition 2 on page 5.

Mr. Wilcox explained that such a filing was mandatory for all licensed applicators, and he assumed, he said, that the superintendent of the golf course was going to be a licensed applicator.

Mr. Athearn pointed to Item 15 under Condition 2 on page 4, which concerned the process by which the WPC would review the approved pesticide list and inform the Applicant if one of the accepted products turned out to pose a substantially greater environmental threat than had been supposed. He requested that the term "other threats" be added to the phrase "if a significant threat to the water resources is posed." After some discussion, Mr. Athearn's proposed amendment was changed to "any significant retroactive negative effect on the environment" and the term "water resources" was deleted.

Mr. Zeltzer wanted to know how one could monitor wildlife for the short term. "By the time you find out that this isn't some natural trend that's happening, that you're killing them with something, you know, they're gone," he remarked. Mr. Wilcox replied, "Not being a biologist, I can't tell you for sure. But I think that there are statistical formulas that tell you what the normal population deviation would be from the average, and I imagine they would apply ... a model of that sort." He added, "But I agree with you. It's really difficult to attribute a source to a cause."

Ms. Sibley tried to clarify for the members what her intention had been when she had suggested Item 15, explaining, "Just as Bob [Zeltzer] mentioned, you know, he was using things on his lawn 12 years ago that now can't be sold - obviously, if it can't be sold, they can't possibly use it - but what I had in mind was, you know, scientific evidence that the particular product was causing problems in general, not on this site."

Ms. Sibley added that this condition should apply not only to pesticides but to any turf management product and that the Commission needed to address evidence in the scientific literature that indicated that the product might be more dangerous than was currently known.

Regarding Ms. Ottens-Sargent's observations, Edgartown member at large Christina Brown said that she believed there was always some kind of wildlife management plan that would go through the MEPA and Natural Heritage methodology and then come back to the Commission. To assure that drastic changes in wildlife populations would be tracked, she suggested that Staff look at what those agencies had required in the past.

Ms. Israel observed that it seemed to him that six species of birds had been lost since the Applicant had done the wildlife survey for the first Application (DRI #515). Perhaps it was due to a change in methodology, he added.



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Ms. Greene proposed that Item 15 be left pretty much the way it was, because the Commission would not want to wait years and years until scientific evidence had firmly established the bio-toxicity of a product. "If something should pose a threat, we should be able to shut it down," she said.

Mr. Woodruff suggested adding the following wording to Item 15: "... turf management products, including pesticides, fertilizers or whatever else ..." Ms. Greene remarked that for the Martha's Vineyard Golf Partners, these were simply referred to as "icides." Mr. Woodruff noted that not all products fell into that category. Mr. Wilcox would know how to word that, agreed Mr. Donaroma, Ms. Greene and Ms. Brown.

Referring to Ms. Brown's earlier statement, Ms. Ottens-Sargent said that she did not think that the wildlife monitoring plan would come back to the Commission after MEPA and Natural Heritage had reviewed it. "No, it does," said DRI Coordinator Jennifer Rand. Ms. Ottens-Sargent countered that the approach and standards of those agencies were fairly simplistic and that they would only be looking at deaths and not, for instance, at changes in behavior. Ms. Brown reminded her that this was why she had suggested that Staff study their methodology by looking at examples of those reviews.

Mr. Toole called for a short recess. The time was 9:15 p.m. The Special Session of the Land Use Planning Committee re-opened at 9:25 p.m.

Mr. Wilcox moved on to Item 19 under Condition 2 on page 4 of the *January 31 Staff Notes*. This condition, he explained, was designed to protect the wetlands from a drop in the water table as a result of water withdrawal by the golf course. He read the item aloud.

"I honestly disagree with the need for this," Mr. Wilcox remarked, "and my reasoning for this ... is that the, at the margins of an aquifer where the groundwater enters a coastal pond – it's called a constant head boundary – and the water table fluctuates very little at that point. If you go into the interior of the aquifer, the water table might go up and down 3 or 5 feet in a given year. At the edge of the shoreline, it only goes up and down by a foot, maybe even a little less."

Mr. Athearn moved to eliminate Item 19, seconded by Mr. Rusczyk. Ms. Sibley commented, "I respectfully disagree. Bill [Wilcox] says it's not likely to be a problem, but ... it would be a pretty significant problem if it was a problem, and unless Bill tells me that it would be extremely expensive to do this, I don't think that his judgment of its being improbable should be as important as how significant it would be if it happened."

Mr. Wilcox said that he did not have an estimate of the cost for a wetlands monitoring program. Responding to a question from Mr. Donaroma, Mr. Wilcox described how one would lay out plots and count the plant and animal species within those. Then one would come back when the water table was lower to see if there had been any changes in the plant materials and wildlife.

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After some discussion and further explanation by Mr. Wilcox, Ms. Ottens-Sargent asked Mr. Wilcox what he thought of the idea of just having a baseline. "I think baseline information is great stuff to have," answered Mr. Wilcox, "because you never know when you're going to need to go back and look at it. But my feeling is, if we go back and look at it, it won't be because the golf course is drawing the water table down to the point where it's injuring the wetlands. It would be some other reason."

Mr. Woodruff pointed out that the Watershed Protection Committee was charged with monitoring any impacts from the development of the golf course, quoting from the last paragraph on page 6. "So this is an impact," he observed, "so it falls under their jurisdiction."

Mr. Toole conducted a voice vote on Mr. Athearn's Motion. Said Motion carried with 10 Ayes, three Nays and three Abstaining. (Mr. Wey was ineligible to vote.)

Mr. Wilcox noted that Item 21(a) would be discussed on Monday, after the details of the environmental impairment insurance policy had been worked out. Moving through Items 21(b) and 22 on page 5, there were no questions or comments. Regarding Item 23, Ms. Greene suggested that the word "monitoring" be inserted between the words "each" and "program." Mr. Wilcox agreed. As for Item 24, Ms. Warner pointed out that an "s" should be added to the word "green" so that the terms read "greens liners."

Regarding Item 25 under Condition 2 on page 5, Ms. Brown wanted to know if the Commission had defined the term "beginning construction." "Not that I know of," replied Mr. Wilcox. After some discussion, it was agreed that this term would have to be precisely defined. Mr. Wilcox said he would work on that.

Moving on to Item 27, Mr. Wilcox explained that the purpose of this condition was to try to get some maximum habitat value out of the three manmade ponds planned for the site. Referring to the last paragraph of Item 27, he described how in the area where the pond curved back onto the fairway there should be a kind of margin along each side made of secondary rough materials. Then on the side that would be right in the fairway, it would likely be primary rough right to the edge of the pond, he said.

Mr. Israel wondered if it would be wise to remove water from the ponds for irrigation, since part of their purpose was to attract new species of wildlife. Mr. Wilcox pointed out that in one of the ponds, the drop in level should be no more than 3 feet during the course of the growing season. "So that pond will be maintained pretty close to the natural fluctuation cycle," he said.

"Why wouldn't you want to do that with all of them?" asked Mr. Israel. "Because on the other hand, we want to keep the water withdrawal down from their irrigation wells," replied Mr. Wilcox. "If we do that, they're going to need to withdraw water out of at least ... 5 or 6 acres of pond they would want to have for watering the golf course during dry spells."

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Would the habitat resulting around the ponds be considered wetlands? Mr. Israel wanted to know. "I think so, yeah," responded Mr. Wilcox. He and Mr. Israel discussed this for some minutes. Mr. Wilcox pointed out that agricultural operations were allowed to withdraw water from ponds where the wetlands had been firmly established.

Ms. Greene noted that the way the first paragraph of Item 27 was worded, it seemed as if the Applicant would have to water the edges of the ponds if the pond level went down to a certain level. Wasn't that counterproductive? she inquired. "I think what I was trying to say there," remarked Mr. Wilcox, "is that if they're establishing wetland plants in and around the perimeter of their ponds and they want, if we want those wetlands to be functional wetlands, they need to maintain the pond level within a reasonable range close to the natural cycle."

Responding to another question from Ms. Greene, Mr. Wilcox pointed out that his intention was for two of the ponds to be truly irrigation ponds, while the third would contain established wetlands at its perimeter. Mr. Greene suggested that he say that at a minimum the conditions described in Item 27 had to happen at the edges of one of the ponds. Mr. Wilcox agreed.

Regarding to Item 26, Chairman Vercruysse wondered if the Applicant would have to return to the Commission for a Modification if the golf course accepted treated municipal wastewater. Mr. Wilcox said he did not have an answer for that. Ms. Greene thought that it would be required since it was an issue that would affect more than a single Town.

Chairman Vercruysse wanted to know what would happen to the nitrogen loading levels if municipal wastewater was used for irrigation. Ms. Greene answered that it would be graywater and that the levels of nitrogen would probably be around 3 milligrams. The Chairman expressed concern that the acceptance of the wastewater might increase the nitrogen loading and bring it back to the maximum level after it had been brought down following the grow-in period.

Mr. Wilcox pointed out that the Commission would still be holding the Applicant to the same nitrogen application rates, as stated in Item 2 under Condition 1 on page 1. "So if they increase their fertilizer from 2.9 pounds per acre to 3.5 and replace that with 24 pounds of wastewater nitrogen, that's okay," he said. "It's still at that number."

Mr. Woodruff expressed concern, as Mr. Israel had, that the Applicant had promoted the idea of the manmade ponds as sources of new habitat yet intended to use them for irrigation purposes. He wanted to know if the latitude of a 3-foot drop in one of the ponds was adequate. "If we don't let them use it for irrigation, then they're going to have to take it out of the wells," said Ms. Greene.

Mr. Wilcox provided some figures. DEP indicated a need for 1.5 inches per week per acre for a golf course, with 0.3 inches of that provided by rainfall. So with 1.2 inches of

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water coming from the irrigation program times 84 acres (68 acres of managed turf plus 26 acres of secondary rough), that would come to 1.6 acre-feet per week. And if you assumed that nothing was contributing to the ponds over a six-week period, you'd have 9.6 acre-feet required. There would be a 4.8-acre pond dropped 2 feet. "So it's really not a big deal to replace the amount of water that they need from a fairly small pond," Mr. Wilcox concluded.

Ms. Sibley observed that it was clear that the primary purpose of the ponds was to serve as reservoirs during dry spells. "I think personally that the testimony that these ponds were going to increase the diversity of the golf course is not particularly impressive to me," she said. "By the same token if they do end up with fish living in there – I mean, I don't know if they were planning to stock these things – I hardly think that they're going to draw them down to the point where there're are sort of fish flopping in the mud."

Ms. Sibley reiterated that she had never considered the ponds to be a sort of environmental enhancement anyway. "Let them use their water..." she concluded.

Mr. Israel worried that nesting birds could find home in the wetlands habitat around the ponds and that they would be threatened by lowering the water level in the ponds. He stressed that to him the concept of habitat enhancement had been "a major pitch." He asked if they would be filled with re-circulated water. No, answered Mr. Wilcox, the pond would be refilled from the golf course's wells during periods when they did not need the whole 290,000 gallons a day.

Mr. Zeltzer remarked that he often walked by a 4- or 5-acre natural wetland area that dried up in the summer; when water returned, "everything seems to reappear." This was a natural cycle, he emphasized. Ms. Greene recommended that they also view the pond water, especially from Pond A, as a source of water to fight fire in the Town.

Ms. Warner asked Mr. Wilcox if he had ever commented on the testimony that birds died in such ponds from pesticides. "That is a new one on me," said Mr. Wilcox. "There won't be any pesticides applied from this course that would affect birds, to the best of my knowledge."

Responding to a question from Mr. Israel, Mr. Wilcox explained that the Applicant would probably be filtering the pond water to remove algae that could clog the irrigation system nozzles. It was also possible, he added, that the Applicant might want to suppress the algae with a product like Aqua-Shade.

Mr. Wilcox turned to the last paragraph on page 7, which concerned the membership of the Watershed Protection Committee. Ms. Warner proposed that instead of alternating a member from the Lagoon Pond Association and the Friends of Sengekontacket, a member from each of these associations always be seated on the committee. "They have the most at stake in this," she said.

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Ms. Sibley observed that she was confused by the presence on the committee of the three Boards of Health, since the possible threats were not to human health but to the health of the shellfish in the ponds. "I'd rather see it balanced more toward Conservation Commissions and shellfish groups and less toward Boards of Health," she said. Mr. Wilcox answered that 1) the Boards of Health would have to be involved in the nitrogen offset program; and 2) the Oak Bluffs Board of Health would be the agency the WPC would appeal to to obtain a Cease and Desist Order.

Mr. Best recommended that the member from the Down Island Golf Club not be allowed to vote. He also thought that membership should be added from Conservation Commissions, the three Shellfish Departments, the Lagoon Pond Association and the Friends of Sengekontacket.

"First of all, the Down Island Golf course has a right to speak and vote on any of these issues, I think," said Ms. Greene. She added that when one started having voting and non-voting members, it meant having a category of second-class citizens. Ms. Brown said that she thought that the balance offered by Mr. Wilcox was as good as it was going to get. She agreed with the presence of the Boards of Health, she commented, because "they do have the fastest and most powerful enforcement capabilities."

"So moved," said Mr. Donaroma, whose Motion (to approve as written by Mr. Wilcox) was seconded by Ms. Greene. Mr. Israel argued against the Motion, while Mr. Zeltzer requested that the LUPC Chairman call the question. By voice vote, said Motion carried, with 10 Ayes, five Nays and 1 Abstaining. (Mr. Wey was ineligible to vote.)

Mr. Wilcox turned to page 8, where he had provided some suggestions regarding the concept of the proposed performance bond. "I think we need to massage that some more," he observed.

DRI Coordinator Jennifer Rand distributed a copy of her revised suggested conditions, referred to hereinafter as *Rand Staff Notes of January 31, 2002*. [See the meeting file for a copy.] Mr. Rusczyk wanted to know where the condition was about the offer by the Applicant to let the Town have the right of first refusal if the land ever came up for sale for whatever reason. Ms. Rand said that she had forgotten that and would insert it in the next draft. Some discussion of this issue ensued. Ms. Brown recommended that the Commission members not be caught up in the details of the wording. "That's what we have Staff for," she observed.

Ms. Rand pointed to the new material she had added about the so-called partial membership structure at the Edgartown Golf Club. Regarding the question about whether zoning restricted the recreational use to being private, she said, "The way I read the zoning, no, it doesn't." Responding to a question from Mr. Israel, Ms. Rand explained that the Applicant had applied to have a private club but that it did not necessarily have to be private.

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Mr. Best said that he thought that the private-versus-public question had been asked because the Farm Neck Golf Club was a private club, yet members of the public who were not members could play there if tee times were available. Ms. Rand reiterated what she had learned from the Oak Bluffs Zoning By-Law. "My interpretation of the zoning does not say that this cannot be open to the public," she explained.

Ms. Rand moved on to the amendment to the Applicant's offer to the Town of a campground lease, having changed it to a 99-year lease as requested. She added that the Town of Oak Bluffs could not enter into such an arrangement without a Town Meeting Vote. "I don't think we should be in a position of conditioning a Town Meeting vote," she remarked. The second part of the amendment concerned the Town's option to co-hold a Conservation Restriction on the campground with the Vineyard Open Land Foundation.

The fourth amendment, continued Ms. Rand, had to do with the timing of two of the offered donations, that to the Trails & Byways Committee and the one for the blinker intersection improvements. The wording she was recommending was: "... this donation shall be given within 60 days after the Town permitting appeal period." In addition, she did not consider it appropriate to impose any sort of timing limitation on the donation to the Dukes County Regional Housing Authority because the Applicant's offer had been worked out directly with that agency and had had nothing to do with the Commission.

Ms. Greene said she recalled that the donation to the DCRHA was not to be used for administrative purposes and she did not see that in Ms. Rand's list of offers. "Well, I can put it in there," said Ms. Rand. "Legally, Dukes County cannot accept it for administrative purposes..." "I think you should put it in there," remarked Ms. Greene, who also thought that the Applicant should be able to choose which affordable housing entity the donation would go to.

Ms. Rand again explained that all these arrangements had been worked out between the Housing Authority and the Applicant and that she was not comfortable amending any part of the arrangement. Ms. Greene argued that the Commission could accept the Applicant's offer of two lots "and we can say that they have to give them to a non-profit of the Applicant's choice."

Commission Executive Director Charles W. Clifford made the point that the Commission did not have to touch the agreement worked out between the Applicant and the Housing Authority. "If Dukes County and the Down Island people have said 'two lots,' drop it. Don't touch it. That's a deal between them," he said, adding, "Don't accept an offer they didn't make to you." "Okay," said Ms. Greene, who still wished to include the information about the \$60,500 donation not being applied for any administrative use by the DCRHA.

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"But if we're striking everything after the first sentence, that goes away," said Ms. Rand. "No," said Ms. Greene, "I want it to say, 'The donation of \$60,500 to the Dukes County Regional Housing Authority shall not be used for administrative purposes.'"

Ms. Sibley disagreed with the idea of dropping the rest of the paragraph, since mitigating a development's effects on the state of affordable housing was part of Chapter 831. "So we should document it by accepting [it].... I don't think it matters who they offered it to. This is their affordable housing offer, and we have an Affordable Housing Policy. So we're accepting this, acknowledging it as it were. We have to look at these issues."

Ms. Sibley added that she thought it was important that the Commission also have something say about *when* the donations would be made in view of the actions of an earlier Applicant, who had wanted to drag on the process and had been unwilling to make the donation at an appropriate juncture.

Regarding the second sentence of the same item, Ms. Brown suggested that if the Commission was going to accept the \$25,000-a-year donation as part of the Applicant's mitigation, then the Commission should provide a specific trigger for that donation. Ms. Greene recommended that Staff look again at the letter describing the offer. "Because I think Chuck [Clifford] is right," she said. "This was just something that appeared one day from the Housing Authority that did not come through the Applicant."

Responding to a point made by Ms. Brown, Mr. Clifford stated, "The Applicant never in a Public Hearing made an offer to you. You can acknowledge the fact that he has done it. But you can't accept an offer that's not made to you." Ms. Cini suggested that the Commission should acknowledge the offer in the Written Decision, since it figured in its calculation of the benefits and detriments of the project. Ms. Rand said she would fix the wording before the Monday LUPC meeting.

Turning to the Endangered Species Monitoring Plan condition, Ms. Rand noted that she had used language that had been used in the past and that she was having trouble getting anyone from the Natural Heritage and Endangered Species Program to call her. Once she heard from Natural Heritage, the Commission could decide whether or not they wanted tighter restrictions than the ones Natural Heritage was imposing.

"My suggestion would be, if the Endangered Species Monitoring Plan that MEPA approves is not tight enough," Ms. Rand went on, "we have a second review level here, which is a conservation ecologist that we choose to review it and tighten it up. And I think that we need to put the trust in the people that do this for a living, and frankly, I don't.... I don't think I could feel comfortable sitting in front of you telling you that Natural Heritage can send me something and I'm going to tell you it's tight enough." Ms. Brown, Ms. Greene and Mr. Donaroma said that they liked that idea.

Turning to her Staff Notes dated January 17, 2002, Ms. Rand said that the first three Applicant offers she had listed were included in Mr. Wilcox's Staff Notes and so had

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already been amended. She also recommended that the offers to the Aquatic Center and the Oak Bluffs Library Fund be struck. "I don't think that we should be in the business of accepting an offer that is wonderful but not relevant to us in this project," she said. Mr. Toole, Ms. Warner and Ms. Brown expressed agreement with this.

Ms. Greene pointed out that the same changes regarding the Housing Authority had to be made to the *January 17 Staff Notes* as had been made to the January 31<sup>st</sup> document. Ms. Rand said she would do that.

Ms. Sibley wanted to know if the Applicant was requiring the Down Island Golf employees to live in the dormitory. Ms. Rand answered that if an employee did not already live on the Island, he had to sign a contract with the Applicant regarding staying in the dormitory. And how had they come up with the \$20-a-day figure? asked Ms. Sibley. Ms. Rand replied that there was some reason but that she could not recall what it was. Ms. Sibley wondered about the effect of inflation over the years. Ms. Greene pointed out that the way it was written, the figure was "not to exceed" \$20 a day.

Ms. Sibley expressed concern that the Applicant would have to return to the Commission if he wished to change that figure. Ms. Greene noted that the Applicant would be allowed a Consumer Price Index increase.

Referring to page 2 of the *January 17 Staff Notes* under "Membership," Mr. Best said that he thought that the Island members would be chosen *annually* by lottery. "They offered that," said Ms. Brown. Ms. Rand agreed to insert the word "annually."

Ms. Brown reminded Ms. Rand that the item about the bulk of the property's being under a Conservation Restriction had to be rewritten to include the new phrasing about the Town and Webb's Campground. She also suggested that in doing so, Ms. Rand should refer to the specific map showing what was in and what was out of conservation.

Ms. Sibley recalled that during the first Application process there had been a discussion about the bicycle path's running through an archaeologically sensitive area. Ms. Greene said that one could, in fact, build up over the archaeological site so long as one did not dig into it. "There will be an archaeological construction site monitor," said Ms. Rand. Ms. Sibley proposed that such building-up be mentioned specifically in the Decision. "The only way they can do it is to build up," reiterated Ms. Greene, "and there will be an inspector on site the entire time they work. That's covered very carefully by the State."

Ms. Sibley reworded her comment: "I just want to make sure it's a *usable* easement." "I think they'll be all set," responded Ms. Rand, "because of the, there is a construction monitor and there's an archaeological restriction and I don't think, I don't think you can build this easement so that it can't be used, with the oversight that there is."

Mr. Israel thought that the contribution to the blinker light work should be included. "It's in there, page 1" replied Ms. Rand.



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Mr. Woodruff wanted to know if the question about the 1-to-1 pitch pine mitigation had been resolved. "No, we haven't," answered Ms. Rand. "As I've said before ... in the first set of information given to us it was a 1-to-1 mitigation for stands of pine. In reading the discussions with this particular project, the [DRI No.] 543, the one we're on now, they felt that they had, by purchasing the additional land, met that. ... We haven't resolved it because we've had a conversation here. My suggestion to you was that we direct them to move those two ponds, which is the mostly densely treed area of the property, and you'll come close."

"We've talked about that, we should do that," said Mr. Donaroma, "and I don't have a problem with it if they're cutting down pine trees, replacing with seedlings. I don't think that's such a big deal." "Where?" asked Ms. Brown. Ms. Rand suggested that the Applicant could come back once he had the new locations for the ponds finalized. Mr. Donaroma also reminded her about the stand of beech trees. The Applicant could also return with that, said Ms. Rand.

Mr. Woodruff pointed out that Holes 16, and 5, Ponds D and C, and Holes 4 and 6 would take out "just about every pine on that property... I mean if we accept Webb's as a negation, then we can just leave it." "My first suggestion is we move C and D," responded Ms. Rand. "That's a good start," said Mr. Woodruff. "We're going to have to work with the Applicant," said Mr. Donaroma. Ms. Greene recommended that Ms. Rand figure out a way to write a condition that the Applicant had to return to the Commission with his redesigned plan.

Mr. Israel expressed concern that the Commission was starting to redesign the project. Ms. Sibley agreed that this was a "tricky" point, since some of the areas on the site might be parts of whole ecosystems and that it would be problematic to favor one species over another if, say, one had to cut down oaks to save pines.

Ms. Brown recommended that they look at the aerial photographs in the LUPC meeting the following Monday and have Staff do something graphically that would make it easier for them to see where the various areas of vegetation were. "I don't think we can do that," remarked Mr. Athearn. "A forester would have to do that, because even Mike [Donaroma], I don't think, really knows what the soils and trees and what the match is, in order to successfully make a little pine grove where there was an oak grove."

A discussion about whether or not the Commission could simply ask the Applicant to move the ponds and how the 1-to-1 pitch pine mitigation could be achieved went on for some minutes.

It was agreed that the members would consider this over the weekend. Ms. Brown suggested that they look at the January 3, 2002 Meeting Minutes, which contained a lot of recommendations from Commission members that they might wish to include.

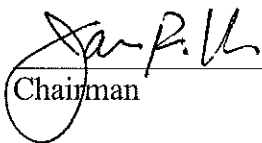
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There ensued a brief discussion about when an Oral Vote on the project would take place and how the Motion or Motion(s) would be formulated and coordinated with the proposed conditions.

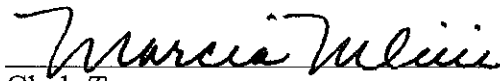
Mr. Donaroma recommended that Monday's LUPC meeting open with a discussion of benefits and detriments for this project.

Ms. Cini made two announcements: that the Full Commission Meeting the following Thursday would begin an hour earlier than usual for a presentation by Auditor Dick Dionne; and that the Towns of Tisbury, West Tisbury and Aquinnah had not yet paid their assessments.

Ms. Greene made a Motion to Adjourn, duly seconded. The Special Meeting adjourned at 10:54 p.m.

  
Chairman

April 24, 2002  
Date

  
Clerk-Treasurer

May 23, 2002  
Date

PRESENT: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel;  
C.M. Oglesby; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R. Toole;  
J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.

ABSENT: A. Bilzerian; E.P. Horne; J.P. Kelley; and R.L. Taylor.

*[These Minutes were prepared by Staff Secretary Pia Webster using her shorthand notes as well as a tape recording of the Special Meeting.]*